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PAGE 01 STATE 298612

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E.O. 11652: GDS

TAGS: PFOR, CS

SUBJECT: VESCO EXTRADITION

1. SUMMARY: ORTIZ MET DECEMBER 7 IN NYC WITH FISKE, SAGOR, LOWE, FRYMAN AND WEISSMAN, REVIEWING IN MINUTE DETAIL WIDE RANGE OF PROBLEMS INVOLVED IN ANY EXTRADITION ATTEMPT. VIGOROUS INTERCHANGE PRODUCED APPARENT CONSENSUS THAT AT LEAST FIVE MAJOR AREAS EXIST WHERE SUCH AN EFFORT MIGHT FLOUNDER, ESTABLISHING BOTH NEED FOR EXTREMELY CAREFUL PLANNING AND PREPARATION OF ANY FUTURE STEPS DECIDED UPON, AS WELL AS EXPECTATION THAT AN EXTRADITION PROCEEDING MIGHT EASILY CONSUME MINIMUM OF 12 TO 18 MONTHS. U.S. ATTORNEY'S STAFF WILL BE MEETING MORNING DECEMBER 8 TO REVIEW CONCLUSIONS OF INITIAL SESSION AND PLANS TO HOLD WIND-UP SESSION WITH ORTIZ AFTERNOON DECEMBER 8. ORTIZ RECEIVED \$7,500 PLUS CHECK AT CLOSE OF SESSION, COVERING STUDY AND TRANSLATION OF INDICTMENT. HE APPEARED TO BE IMPRESSED BY THE LEVEL AND INTENSITY OF WELL-ORGANIZED PROBING-OF-ISSUES BY U.S. ATTORNEY AND KEY ASSOCIATES. THEY, IN TURN, FOUND ORTIZ' FORCEFUL ORAL PRESENTATION A "STRONGER" EXPOSITION OF POTENTIAL PITFALLS THAN EITHER WRITTEN REPORT CONTAINED, CONFIDENTIAL

CONFIDENTIAL

PAGE 02 STATE 298612

OR, APPARENTLY, THAN THEY EXPECTED.

2. IN ADDITION TO FISKE, WHO LED OFF DAY-LONG SESSION AND

PARTICIPATED PERSONALLY IN MOST OF DISCUSSION, JACK LOWE AND TOM FRYMAN OF U.S. ATTORNEY'S OFFICE TOOK PART. LATTER LIKELY TO TAKE CHARGE OF NY END OF ANY EXTRADITION EFFORT, SHOULD ONE BE PURSUED. HE PROVED TO BE HIGHLY KNOWLEDGEABLE, EFFECTIVE INTERROGATOR. SAGOR ALSO PARTICIPATED IN DECEMBER 7 SESSION, APPARENTLY "PRO BONO", AND MOST EFFECTIVELY TOOK MAJOR ROLE IN DEFINING ISSUES. ORTIZ DID COMPETENT, ENERGETIC JOB, IN VERY ACCEPTABLE ENGLISH, OF AMPLIFYING VIEWS IN HIS STUDY.

3. FISKE BEGAN BY SEEKING CLARIFICATION OF STATUS OF NEW LAW, PARTICULARLY IN TERMS OF ANY POSSIBLE AUTOMATIC TIME CUT OFFS FOR U.S. ACTION. DISCUSSION MOVED TO FIRST OF FIVE MAJOR OBSTACLE AREAS, NAMELY, POSSIBLY OF VESCO NATURALIZATION IN JUNE, 1977. ORTIZ EVIDENTLY NOT TERRIBLY SANGUINE THAT A PENDING EXTRADITION REQUEST, IN AND OF ITSELF, MIGHT PROVE BAR TO PROCESS REACHING CONCLUSION FAVORABLE TO VESCO. PROBLEM OF ARTICLE 32 OF CONSTITUTION WAS EXAMINED AS WAS THE OPPOSING BODY OF LATIN AMERICAN LEGAL DOCTRINE WHICH SUPPORTS EXTRADITION EVEN OF CITIZEN WHEN ALLEGED CRIME WAS COMMITTED PRIOR TO HIS NATURALIZATION. POSSIBILITIES OF "FILING OPPOSITION" TO PETITION FOR NATURALIZATION TOUCHED UPON, AS WELL AS ORTIZ' EFFORTS TO DISCOVER ANY "RECORD" VESCO MAY HAVE IN COSTA RICA, IF ONLY OF TRAFFIC VIOLATIONS (RESULTS NEGATIVE). PIZA'S PROPOSED AMENDMENT TO NATURALIZATION STATUTE, "ONLY GOOD SOLUTION", WAS MENTIONED ALSO, WITH ORTIZ COMMENTING THAT ADMINISTRATION FORCES BELIEVE THAT ANY SUCH CHANGE WOULD BE TANTAMOUNT TO SINGLING OUT VESCO, EXACTLY WHAT THEY HAD BEEN ACCUSED OF IN ACHIEVING THE EARLIER "VESCO LAW".

4. DISCUSSION TURNED TO LENGTHY EXPOSITION OF RELATIONSHIP OF ARTICLE 3 OF NEW LAW VERSUS ARTICLE 8 OF CONSTITUTION AND TENDENCY OF COSTA RICAN COURTS TO BE STRICT CONSTRUCTIONISTS. IN THIS CONNECTION, SECOND MAJOR STUMBLING BLOCK TO EXTRADITION WAS AIRED BY ORTIZ, COMMENTING THAT HE CONSIDERS ARTICLE 3(B) "MOST DANGEROUS SECTION" OF NEW

CONFIDENTIAL

PAGE 03 STATE 298612

LAW. RECHNITZER CASE, NOW ACCORDING TO ORTIZ TRANSFORMED INTO AN ACTION BY COSTA RICAN ATTORNEY GENERAL, BRINGS INTO FOCUS "IDENTICAL CRIME" ISSUE DEALT WITH IN ARTICLE, POSSIBLE CONFLICT WITH TREATY, AND WHOLE HOST OF PROBLEMS RELATING TO SECTION 6 OF COSTA RICAN CRIMINAL CODE, SECTIONS 10 AND 42 OF CONSTITUTION, ETC. RECENT CHANGES IN CRIMINAL CODE FURTHER COMPLICATE ISSUE. IT WAS VERY OBVIOUS THAT ORTIZ AND LOWE HAD DIFFERENT INFORMATION BASE

RE RECHNITZER CASE AND THERE WAS CONSIDERABLE SPECULATION RE NATURE OF STILL SECRET PROCEEDINGS. UNDOUBTEDLY, OPENING UP OF PROCEEDINGS OF THE CURRENT CRIMINAL REPEAT CRIMINAL CASE IN COSTA RICAN COURTS, SOMETHING

ORTIZ ANTICIPATES SHORTLY AS RESULT OF PRESS ATTENTION, WILL BE HIGHLY USEFUL IN EVALUATING EXTRADITION RELATIONSHIP. ORTIZ REFERRED EXTENSIVELY TO HIS WORK ON THE INDIAN CASE AND POSSIBILITY OF AT LEAST A TWO-YEAR DELAY IN GETTING ANY DOMESTIC COSTA RICAN CASE AGAINST VESCO RESOLVED, THEREBY BARRING ANY FINAL JUDGEMENT EVEN IF A U.S. EXTRADITION EFFORT WAS PROCEEDING APACE.

5. POSSIBLE VESCO DEFENSE BASED ON POLITICAL MOTIVATION OF USG IN PURSUING HIS EXTRADITION FORMED THIRD MAJOR AREA OF SCRUTINY IN SESSION. PROCEDURAL QUESTIONS ON POSSIBLE WAY THIS COULD BE HANDLED, RIGHT TO USE WITNESSES, TOUGH BORDERLINE DISTINCTIONS RE WHAT IS ACCEPTABLE IN VIEW OF LATIN AMERICAN PRECEDENTS AND WHOLE HOST OF RELATED QUESTIONS WERE EXAMINED, WITH ORTIZ COMMENTING THAT HE BELIEVES THIS PROVISION OF NEW LAW WAS INSERTED SPECIFICALLY TO ENHANCE VESCO'S OPPORTUNITY TO RAISE THIS ISSUE.

6. CONSIDERABLE TIME ALSO WAS DEVOTED TO THE NATURE OF THE CURRENT INDICTMENT (BRINGING ORTIZ CLOSEST TO A POINT OF ANYTHING RESEMBLING A "CLASH" WITH U.S. ATTORNEY'S OFFICE PERSONNEL). ORTIZ ARGUES SHARPLY THAT IT WAS NOT A VERY SUITABLE DOCUMENT FOR PRESENTATION TO COSTA RICAN COURTS, BECAUSE OF ITS GENERAL NATURE AND ITS FAILURE TO PRESENT CLEARLY THE "WHEN, WHO AND HOW" OF THE ALLEGED FRAUD. AFTER MUCH GIVE AND TAKE, ORTIZ INDICATED THAT WAY OUT WOULD BE TO SUPPLEMENT INDICTMENT WITH A FURTHER DOCUMENT WHICH WOULD REMEDY THIS PROBLEM, ONE "UNDER-CONFIDENTIAL

CONFIDENTIAL

PAGE 04 STATE 298612

STANDABLY" ROOTED IN DIFFERENCES BETWEEN THE TWO LEGAL SYSTEMS. OBVIOUSLY, REDUCING THIS EXTREMELY COMPLEX CASE TO A DOCUMENT WHICH A GENERALLY INEXPERIENCED JUDGE LIKELY TO HEAR CASE INITIALLY COULD UNDERSTAND WILL BE NO EASY OR QUICK TASK, ALL AGREED.

7. RELATED TO ABOVE, THE FIFTH AND PERHAPS MOST FUNDAMENTAL OBSTACLE WAS EXTENSIVELY EXAMINED, NAMELY WHETHER COUNTS 2 AND 3, AND 4 AND 5 CAN STAND UP INDEPENDENTLY IN EACH PAIR. GIVEN THE INTERSTATE TRANSPORTATION AND TRANSMISSION "HOOKS" ON WHICH FEDERAL JURISDICTION HANGS, AND THE ABSENCE OF THESE SPECIFIC CRIMES IN COSTA RICA, GRAVE DOUBT WAS EXPRESSED BY ORTIZ THAT THE EARLIER DECISION BY A NOW NON-EXISTENT COSTA RICAN COURT WOULD HOLD UP UNDER A VESCO ONSLAUGHT ARGUING THAT THE USG AT

THE FEDERAL LEVEL IS SEEKING TO EXTRADITE HIM FOR A CRIME (FRAUD IN GENERAL, SIMILAR TO COSTA RICAN FRAUD) FOR WHICH IT CANNOT TRY HIM. GHANAIAAN AND BAHAMIAN PRECEDENTS REACHING OPPOSITE CONCLUSIONS ON THIS ISSUE WERE REVIEWED.

8. IN SUMMARY, SESSION DECEMBER 7 DID MUCH TO FURTHER MUTUAL UNDERSTANDING, BUT PROBABLY ALSO SHARPENS U.S. ATTORNEY OFFICE'S PERCEPTION OF JUST HOW DIFFICULT AND TIME-CONSUMING AN EXTRADITION ATTEMPT WOULD BE. IT ALSO HIGHLIGHTED FACT THAT, THOUGH ON BALANCE NEW LAW IN ORTIZ' OPINION IMPROVED PROSPECTS FOR SUCCESS, IT MAY NOT PROVE TO BE THAT GREAT A BLESSING. IN THIS CONNECTION, MORE INFORMATION ON REAL NATURE AND PROSPECTS OF RECHNITZER CASE BECOMES AN URGENT AND NECESSARY ELEMENT FOR DECISION MAKING. RELATED TO THIS, FISKE TWICE INDICATED TO ORTIZ WE WOULD WANT HIM TO DO NOTHING REPEAT NOTHING ILLEGAL OR UNETHICAL SUCH AS APPROACHING WITNESSES IN THAT CASE TO DETERMINE THIS INFORMATION. FINALLY, ON TWO OCCASIONS, OPINIONS OF PROFESSOR CASTILLO WERE MENTIONED, PRODUCING FROM ORTIZ EXPRESSIONS OF DISAGREEMENT WITH CASTILLO "IF HE REALLY SAID WHAT WAS REPORTED HE SAID". ROBINSON

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